(5)

No. 99-1331

In The

Supreme Court of the United States

JAMES F. LEWIS,

Petitioner,

v.

LEWIS & CLARK MARINE, INC.,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF FOR RESPONDENT

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QUESTIONS PRESENTED

1. Should a federal district court abstain from exercising its original exclusive jurisdiction over an action seeking exoneration from and limitation of liability under 46 U.S.C. § 181 *et seq.*, when there is no conflict between the Limitation of Liability Act and the saving to suitors clause, 28 U.S.C. § 1333(1), because the claimant has not sought a remedy in his state court case that is otherwise unavailable to him in the federal court proceeding?

2. Does the vessel owner's right to judicial consideration of exoneration, as well as limitation of liability, originate in the Limitation Act as construed and interpreted by this Court?

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STATUTES AND RULES INVOLVED

In addition to the statutes and rules contained in the Petition for Writ of Certiorari and Petitioner's Brief, the following statutes and rules are also involved in this case.

46 U.S.C. app. § 181 (1994)

> If any shipper of platina, gold, gold dust, silver, bullion or other precious metals, coins, jewelry, bills of any bank or public body, diamonds, or other precious stones, or any gold or silver in a manufactured or unmanufactured state, watches, clocks, or timepieces of any description, trinkets, orders, notes or securities for payment of money, stamps, maps, writings, title deeds, printings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with any other material, furs, or lace, or any of them, contained in any parcel, or package, or trunk, shall lade the same as freight or baggage, on any vessel, without at the time of such lading giving to the master, clerk, agent, or owner of such vessel receiving the same a written notice of the true character and value thereof, and having the same entered on the bill of lading therefor, the master and owner of such vessel shall not be liable as carriers thereof in any form or manner; nor shall any such master or owner be liable for any such goods beyond the value and according to the character thereof so notified and entered.

46 U.S.C. app. § 184 (1994)

> Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any

property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.

46 U.S.C. app. § 187 (1994)

Nothing in sections 182, 183, and 184 to 186 of this Appendix shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers or seamen, for or on account of any embezzlement, injury, loss or destruction of merchandise, or property, put on board any vessel, or on account of any negligence, fraud, or other malversation of such master, officers, or seamen, respectively, nor to lessen or take away any responsibility to which any master or seamen of any vessel may by law be liable, notwithstanding such master or seaman may be an owner or part owner of the vessel.

46 U.S.C. app. § 188 (1994)

Except as otherwise specifically provided therein, the provisions of sections 182, 183, to 187 and 189 of this Appendix shall apply to all seagoing vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges and lighters.

Rule F(4) of the Supplemental Rules for Certain Admiralty and Maritime Claims

Upon the owner's compliance with subdivision (1) of this rule the court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice. The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for four successive weeks prior to the date fixed for the filing of claims. The plaintiff not later than the day of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at the decedent's last known address, and also to any person who shall be known to have made any claim on account of such death.

Rule F(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims

Claims shall be filed and served on or before the date specified in the notice provided for in subdivision (4) of this rule. Each claim shall specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued. If a claimant

desires to contest either the right to exoneration from or the right to limitation of liability the claimant shall file and serve an answer to the complaint unless the claim has included an answer.

735 Ill. Comp. Stat. 5/2-1105(a) (West 1992)

A plaintiff desirous of a trial by jury must file a demand therefor with the clerk at the time the action is commenced. A defendant desirous of a trial by jury must file a demand therefor not later than the filing of his or her answer. Otherwise, the party waives a jury.

STATEMENT OF THE CASE

This case involves the scope of the grant of original and exclusive jurisdiction given to federal courts under the Limitation of Liability Act, 46 U.S.C. § 181 *et seq.* (the "Limitation Act") and whether the federal district courts should abstain from exercising that full jurisdiction when a Jones Act claimant seeks a non-jury trial of his claim in state court.

On March 17, 1998, Petitioner James Lewis allegedly tripped over a wire and injured his lower back while working for Respondent Lewis & Clark Marine, Inc. ("Lewis & Clark") as a deckhand aboard the M/V KAREN MICHELLE. (Joint Appendix, hereinafter "App." at 12). Lewis & Clark, which operates tugs and fleets on the Mississippi River in the St. Louis Harbor, filed a Complaint for Exoneration from or Limitation of Liability in the United States District Court for the Eastern District of Missouri on March 24, 1998 seeking to protect its

interests with regard to this low back claim. (App. 11-16). Lewis & Clark also filed an Affidavit of Value prepared by a marine surveyor attesting that the value of the M/V KAREN MICHELLE on March 17, 1998 was $450,000. (App. 17).

On April 2, 1998, Petitioner filed suit against Lewis & Clark in the Circuit Court of Madison County, Illinois (the "state court action"), seeking damages for the injuries he allegedly sustained on March 17, 1998. (App. 41-48). Petitioner asserted three counts in the state court action: (1) negligence under the Jones Act, 46 U.S.C. app. § 688 (1994) *et seq.*; (2) unseaworthiness; and (3) maintenance and cure. (App. 41-48). Since he did not file a jury demand in the state court action (App. 82), under Illinois law, Petitioner waived his right to trial by jury and thereby elected a bench trial. *See* 735 Ill. Comp. Stat. 5/2-1105 (West 1992).

On May 8, 1998, District Court Judge Catherine Perry entered an Order Approving Stipulation for Costs and Security for Value and Directing Issuance of Notice and Restraining Suits. (App. 30-33). The Order approved the surety bond in the amount of $450,000 as security for Lewis & Clark's interest in the M/V KAREN MICHELLE (App. 31), enjoined the institution or prosecution of any other suits against Lewis & Clark relating to the incident, and directed that all claims be filed in the District Court. (App. 32-33).

Petitioner initially did not stipulate as to the adequacy of the limitation fund. Rather, he filed an Answer to the Complaint and a Claim of Damages for Injury on June 9, 1998. (App. 66-69). In his Claim of Damages for

Injury, Petitioner contested Lewis & Clark's right to exoneration from and limitation of liability and asserted a claim in excess of the $450,000 limitation fund. (App. 69). Petitioner concurrently filed a Motion to Dissolve Restraining Order (the "Motion"), in which he sought to stay the limitation proceeding and obtain leave to proceed with the state court action. (App. 70-72). The Motion, signed only by Petitioner's attorney, asserted that Petitioner was the sole claimant seeking damages in the proceeding and stated that:

> [Petitioner] waives any claim of *res judicata* relevant to the issue of limited liability based on any judgment obtained in state court; and stipulates to [Lewis & Clark's] right to litigate issues relating to the limitation in this limitation proceeding.

(App. 72). Based upon these stipulations, Petitioner argued that the District Court was required to dissolve the injunction and allow the state court action to proceed because he was the sole claimant. (App. 73-77).

Lewis & Clark filed its Memorandum in Opposition on July 8, 1998. Lewis & Clark argued, *inter alia*, that Petitioner's Motion should be denied because he sought a non-jury trial in the state court action. (App. 84-89). Since that remedy was already available in the federal court proceeding, no conflict existed between the saving to suitors clause, 28 U.S.C. § 1333 (1994), and the Limitation Act that would require the federal court to dissolve the stay. (App. 84-89).

In reply, Petitioner filed the Second Stipulation of James Lewis on July 24, 1998, which provided in part:

> James Lewis . . . stipulates that the value of his claim in the above matter is less than $400,000.00, and less than the value of the limitation fund filed by petitioner Lewis and Clark Marine, Inc.

(App. 102). Based on the Second Stipulation, Petitioner argued that the District Court should dissolve the injunction of the state court action and stay the federal proceeding because the value of the limitation fund exceeded the value of Petitioner's claim and because he was the only claimant. (App. 98-101).

In its Sur-Reply of August 14, 1998, Lewis & Clark again asserted that Petitioner's Motion should be denied because the remedy of a non-jury trial was available in the federal court proceeding. (App. 108-110). Lewis & Clark further argued that Petitioner's Stipulations were insufficient and did not protect Lewis & Clark's right to exoneration from liability in federal court, the first issue to be decided in a Limitation Act proceeding. (App. 112-113).

During the initial stages of the federal limitation case, both parties consented to the case proceeding before a United States Magistrate Judge and the case was assigned to Magistrate Judge Mary Ann Medler. (App. 105, 262). On December 22, 1998, the Magistrate Judge granted Petitioner's Motion. (App. 114). In her Memorandum and Order, the Magistrate Judge dissolved the restraining order entered by the District Court Judge and stayed the federal court proceeding pending final resolution of the state court action. (App. 127). She found the "adequate fund" exception to the federal court's exclusive admiralty jurisdiction applicable. (App. 123). In a

footnote, the Magistrate Judge further opined that the "single claimant" exception may have been satisfied as well. (App. 123, n.3). She further held that Lewis & Clark had no right to pursue exoneration from liability. (App. 124). The Magistrate Judge, however, did not reach the issue of whether Petitioner's decision to seek a non-jury trial precluded lifting the injunction of the state court action. (App. 125-26, n.3).

After the stay was lifted, litigation proceeded in Madison County, Illinois State Court. Lewis & Clark filed its Answer and demanded a jury trial in the state court action. (App. 82). However, Madison County, Illinois is in the Illinois Fifth Appellate District and that Illinois Appellate Court has held that a Jones Act defendant, such as Lewis & Clark, does not have the right to a jury trial in a Jones Act case filed in state court. *See, e.g., Allen v. Norman Bros., Inc.*, 678 N.E.2d 317 (Ill. App. Ct. 1997). On Petitioner's motion, the Circuit Court Judge struck Lewis & Clark's jury demand. (App. 141). Petitioner thus confirmed his intent to seek a non-jury trial.

Lewis & Clark filed a timely Notice of Appeal from the Magistrate Judge's ruling to the United States Court of Appeals for the Eighth Circuit. (App. 129). On appeal, Lewis & Clark argued, *inter alia*, that the District Court erred by failing to properly consider the effect of Petitioner's choice to seek a non-jury trial in state court, and by not requiring the appropriate stipulations to protect Lewis & Clark's right to exoneration from as well as limitation of liability. (App. 131-156). In response, Petitioner moved for leave from the Eighth Circuit to file the Third Stipulation of James Lewis, stipulating that "[u]nder no circumstance will claimant James Lewis seek,

accept nor attempt to enforce" a judgment in excess of $400,000, that the value of Lewis & Clark's interest in the vessel plus freight is $450,000, and that the stipulation for value is sufficient. (App. 237-238). The Eighth Circuit ordered Petitioner's Motion for Leave to be taken with the case for consideration by the panel, but at no time did the Eighth Circuit grant Petitioner leave to file the Third Stipulation.

The Eighth Circuit reversed the District Court on November 5, 1999, finding that the Magistrate Judge had abused her discretion in dissolving the injunction. *See Lewis & Clark Marine, Inc. v. Lewis*, 196 F.3d 900 (8th Cir. 1999). The Eighth Circuit's decision was based on three key holdings. First, the Eighth Circuit held that adjudication of the vessel owner's right to exoneration and limitation was properly within the exclusive jurisdiction of the federal admiralty court, even though Petitioner stipulated as to the adequacy of the limitation fund. *Id.* at 907. Second, the Eighth Circuit found there was no conflict between Lewis & Clark's right to exoneration under the Limitation Act and Petitioner's rights under the "saving to suitors" clause, because the non-jury trial sought by Petitioner in state court was a remedy already available to him in the federal court. *Id.* at 910. Thus, Petitioner had not sought any saved remedies. Finally, the Eighth Circuit found that in the absence of such a conflict, there was no basis for applying the exceptions to the federal court's exclusive jurisdiction over Limitation Act proceedings. *Id.*

On November 17, 2000, Petitioner submitted a Petition for Rehearing and/or Rehearing en Banc, which was denied on December 8, 1999. Accordingly, the Eighth Circuit entered its judgment on December 15, 1999,

reversing the judgment of the District Court and remanding the case for proceedings consistent with the Eighth Circuit's opinion.

On February 7, 2000, Petitioner filed his Petition for Writ of Certiorari. Lewis & Clark filed its Reply Brief on May 4, 2000, stating several reasons for denying the Petition. This Court granted Petitioner's Petition for Writ of Certiorari on May 30, 2000.

SUMMARY OF ARGUMENT

Without dispute, the federal district courts have exclusive jurisdiction over actions filed under the Limitation Act. *See* 28 U.S.C. § 1333. The Limitation Act further mandates that the district courts enjoin other proceedings once the vessel owner has satisfied certain requirements of the Limitation Act. *See* 46 U.S.C. app. § 185 (1994). There are no statutory exceptions to the federal courts' exclusive jurisdiction or the injunction of parallel claims under the Limitation Act. The only exceptions are those created by this Court in *Langnes v. Green*, 282 U.S. 531 (1931) (the "single claimant" exception) and *Lake Tankers v. Henn*, 354 U.S. 147 (1957) (the "adequate fund" exception).

Petitioner incorrectly portrays the "single claimant" and "adequate fund" exceptions to the federal courts' exclusive jurisdiction over Limitation Act proceedings as mechanical rules that should be applied without discretion. In fact, the opposite is true. Both *Langnes* and *Lake Tankers* hold that the district courts should exercise discretion when deciding whether to allow claimants to

pursue claims outside the federal limitation proceeding. That discretion, however, should be exercised only in certain specific and limited circumstances, that is, to serve the purpose for which the exceptions were created.

The Court created these exceptions "[t]o accommodate the competing interests of the shipowner's right to limit liability and the claimant's right to a trial by jury . . . ." *In re Muer*, 146 F.3d 410, 417 (6th Cir. 1997). Because a Limitation Act proceeding is an action in admiralty, jury trials are not available. *See Waring v. Clark*, 46 U.S. (5 How.) 441, 459 (1847). The saving to suitors clause, 28 U.S.C. § 1333(1), however, saves to claimants in Limitation Act proceedings the additional remedy of a *trial by jury*. *See Odeco Oil & Gas Co. v. Bonnette*, 74 F.3d 671, 675 (5th Cir. 1996). As the Court succinctly stated in *Lake Tankers*, the claimant "must not be thwarted in her attempt to employ her common-law remedy in the state court *where she may obtain trial by jury*." *Lank Tankers*, 354 U.S. at 153 (emphasis added).

In this case, no competing interests exist because Petitioner will receive the same remedy in federal court as in the state court – a bench trial. Petitioner in fact rejected the saved remedy of trial by jury by failing to demand a jury trial in the state court action and by successfully moving to strike Lewis & Clark's jury demand. Thus, Petitioner does not need the protections afforded to him under the single claimant and adequate fund exceptions, and these exceptions are not applicable in this case.

Contrary to Petitioner's assertions, Supplemental Admiralty Rule F did not create a substantive right to

exoneration that did not otherwise exist. The Limitation Act and this Court's decisions are the basis of the right to exoneration as well as limitation. *See Norwich Co. v. Wright*, 80 U.S. 104 (1871); *The Benefactor*, 103 U.S. 239 (1880).

Petitioner's contention that Congress intended, in enacting the Limitation Act, to adopt the English rule of practice that required vessel owners to confess liability to seek the benefit of limitation is contradicted by a review of the current Limitation Act provisions, the language of the statutes, the congressional legislative record and this Court's decisions. In fact, this Court expressly rejected this notion in *The Benefactor*, 103 U.S. 239, 242 (1880), when it proclaimed that the English rule "was deemed to be a very onerous requirement" that would go far to deprive vessel owners of the Limitations Act's benefits altogether.

Accordingly, since there is no legal basis to apply either exception to the Federal Court's jurisdiction to try the claim of Petitioner, the Eighth Circuit correctly reversed the District Court's decision.

ARGUMENT

I. FEDERAL DISTRICT COURTS SHOULD NOT RELINQUISH EXCLUSIVE FEDERAL JURISDICTION OVER LIMITATION ACT PROCEEDINGS WHEN THERE IS NO CONFLICT BETWEEN THE LIMITATION ACT AND THE SAVING TO SUITORS CLAUSE BECAUSE THE CLAIMANT HAS NOT SOUGHT A REMEDY IN THE STATE COURT ACTION THAT IS NOT OTHERWISE AVAILABLE IN THE FEDERAL PROCEEDING.

Petitioner declares that review is subject to an "abuse of discretion" standard but does not explain its application to the present case. His Brief seems to suggest that the district court's ruling is entitled to deference. However, as the Eighth Circuit correctly stated, "[a]buse of discretion occurs if the district court reaches its conclusion by applying erroneous legal principles . . . ." *Lewis & Clark Marine, Inc. v. Lewis*, 196 F.3d 900, 907 (8th Cir. 1999). The Magistrate Judge applied the wrong legal analysis because she specifically declined to consider whether a statutory conflict existed between the Limitation Act and the saving to suitors clause before lifting the stay of the state court action. The Eighth Circuit correctly reversed the District Court for this legal error. No deference is to be given to an erroneous legal principle, *i.e.*, an error of law.

Petitioner also contends that the burden is on the vessel owner in a Limitation Act proceeding to demonstrate that dissolution of the injunction will prejudice his right to seek limitation, citing *Universal Towing Co. v. Barrale*, 595 F.2d 414 (8th Cir. 1978). This view, like the Magistrate Judge's opinion, ignores the first step of the

analysis, which is determining whether a statutory conflict exists. This point is in fact noted by the Court in *Barrale*, which held that "[i]nsofar as limitation proceedings deprive claimants of the right to a trial by jury, they conflict with the provisions of 28 U.S.C. § 1333 . . . ." *Barrale*, 595 F.2d at 417. Claimants therefore bear the burden of first establishing a conflict between the Limitation Act and the saving to suitors clause before the question of dissolving the injunction is reached. *Lewis & Clark Marine, Inc.*, 196 F.3d at 910.

A. Absent A Conflict Between The Limitation Act And The Saving To Suitors Clause, There Is No Basis For Applying The Judicial Exceptions To The Federal Court's Exclusive Jurisdiction Over Actions For Exoneration From And Limitation Of Liability.

Petitioner urges a simple mechanical application of the so-called "single claimant" and "adequate fund" exceptions to the federal district courts' exclusive jurisdiction over Limitation Act proceedings. In Petitioner's view, if a limitation proceeding involves only one claimant or the fund is adequate, the claimant is automatically entitled to return to state court, regardless of the remedies he is seeking in state court or those available to him in the federal court. This represents an unwarranted expansion of *Langnes v. Green*, 282 U.S. 531 (1931), and a vitiation of the protections of the Limitation Act, as it ignores the basis and purpose for the exceptions.

As set forth more fully below, the Court originally created these exceptions to reconcile the rights of vessel owners in the admiralty court under the Limitation Act,

which proceeds without a jury, and the claimant's remedy of a jury trial sought by him under the saving to suitors clause, 28 U.S.C. § 1333 (1994). The purpose of the exceptions is not served by staying a federal court limitation action where the remedy of a jury trial is not threatened and the claimant will receive the same remedy in federal court as in the state court, *i.e.* a bench trial. The Eighth Circuit's opinion below is a responsible effort to ensure that the exceptions to the federal courts' exclusive jurisdiction do not swallow the rule and impair its important effectiveness in promoting maritime commerce and protecting vessel owners.

1. The Limitation Act.

The Limitation Act has been called a "venerable statute," which, despite its critics, remains a staple of maritime law. *See Kreta Shipping, S.A. v. Preussag Intercontinental Steel Corp.*, 192 F.3d 41, 44 (2d Cir. 1999). The purpose of the Limitation Act was to induce shipbuilding and investment in the marine industry. *Hartford Accident & Indem. Co. v. Southern Pac. Co.*, 273 U.S. 207, 214 (1927). This Court has long and often held that the provisions of the Act should be construed liberally to effectuate their beneficent purposes. *Larsen v. Northland Transp. Co.*, 292 U.S. 20, 24 (1934). As the reported cases suggest, the current statute applies to ship operations on the inland waterways, so-called "brown water," as well as blue water operations on the high seas. *Ex Parte Garnett*, 141 U.S. 1 (1891); 46 U.S.C. app. § 188 (1994).

The Limitation Act provides that a vessel owner's liability for any loss, damage or injury occasioned or

incurred without his privity or knowledge shall not exceed the value of the vessel and her freight then pending. 46 U.S.C. app. § 183(a) (1994). The proceeding is commenced by filing a complaint in federal court. The federal district courts have exclusive jurisdiction over Limitation Act proceedings. *See* 28 U.S.C. § 1333; 46 U.S.C. app. § 185 (1994). This is true regardless of whether there is a plurality of claims or only one. *Langnes*, 282 U.S. at 539 (1931) (citing *White v. Island Transp. Co.*, 233 U.S. 346, 351 (1914)).

In his Complaint, the vessel owner may seek exoneration from as well as limitation of liability. *See* Fed. R. Civ. P. Supplemental Admiralty & Maritime Claims Rule F(3) (hereinafter "Supp. AMC Rule"); *Texaco, Inc. v. Williams*, 47 F.3d 765, 769 n.19 (5th Cir. 1995). In addition to filing his Complaint, the vessel owner must deposit with the court an amount representing the value of the vessel and its freight, to serve as the "limitation fund" from which damage claims are satisfied. *See* 46 U.S.C. app. § 185 (1994). Supp. AMC Rule F(1).

Upon the vessel owner's compliance with these requirements, the district court must enjoin all related claims against the vessel owner pending in any other forum and issue a notice to all potential claimants directing them to file their claims against the vessel owner in the district court within a specified time. *See* 46 U.S.C. app. § 185; Supp. AMC Rule F(3), F(4). Claimants may then file damage claims in the limitation proceeding within the specified period as well as answers contesting the vessel owner's right to exoneration and limitation. *See* Supp. AMC Rule F(5).

The procedure in the limitation proceeding is well established, and involves consideration of exoneration as well as limitation. The district court first determines whether the vessel owner committed a tort and, if so, it then decides whether the tort was committed without the vessel owner's "privity and knowledge." *See Grubart v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 530-31 (1995). The claimant has the initial burden of proving liability through negligence or unseaworthiness. Then, if the claimant is successful, the burden shifts to the vessel owner to demonstrate a lack of privity and knowledge in order to obtain limitation of liability. *Beiswenger Enter. Corp. v. Carletta*, 86 F.3d 1032, 1036 (11th Cir. 1996). If liability is found, then the district court may enter judgment against the vessel owner *in personam*, as well as *in rem* against the res, or substituted funds. *Hartford Accident & Indem. Co. of Hartford v. Southern Pac. Co.*, 273 U.S. 207, 217 (1927).

2. The "single claimant" and "adequate fund" exceptions.

The Limitation Act provides in straightforward terms that "[u]pon compliance with the terms of this section (that is, the filing of a petition and approval of the security by the district judge) all claims and proceedings against the owner with respect to the matter in question shall cease." 46 U.S.C. app. § 185. The language of the statute provides no exception to its injunction against other litigation. Supp. AMC Rule F(3) mirrors this statutory language. As noted by one circuit court, "[t]he power of a district court in a limitation action to lift a properly issued concursus injunction thus is not at all

apparent from the language of Supplemental Rule F(3) or of § 185. Indeed, the mandatory language used in both the rule and the statute suggest a lack of such power." *Kreta Shipping, S.A.*, 192 F.3d at 47.

The limitation case is thus an independent and legitimate proceeding in which the rights of the vessel owner and all claimants can be and are decided as a result of the federal courts' original federal jurisdiction. However, despite the lack of statutory exceptions to the federal district courts' exclusive jurisdiction, this Court has established two instances in which a claimant may be allowed to pursue a claim outside of the federal limitation proceeding. These exceptions were created to "accommodate the competing interests of a ship owner's right to limit liability and a claimant's right to a trial by jury . . . ": *In re Muer*, 146 F.3d 410, 417 (6th Cir. 1998). The first exception arises when there is only one claimant. *See Langnes*, 282 U.S. at 540-44. The second arises when the value of the vessel and its freight exceeds that of all claims, that is, the fund is adequate to cover all claims filed against the owner. *See Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152 (1957). Thus, this Court's holdings in *Lake Tankers* and *Langnes* adopted what are now commonly known as the "adequate fund" and "single claimant" exceptions.

The answer to the issue of when the "single claimant" and "adequate fund" exceptions should apply lies in the Court's purpose in creating these exceptions set out in the *Langnes* and *Lake Tankers* decisions and from the jurisdictional context in which Limitation Act proceedings are litigated.

In *Langnes*, an injured seaman brought a suit for personal injuries in state court. 282 U.S. at 533. Two days before the jury trial setting, the vessel owner filed a petition for limitation of liability. *Id.* After the injunction was issued restraining the state court suit, the respondent, who was the only claimant, sought to dissolve the order. *Id.* The motion was denied, and the case was tried in federal court, resulting in exoneration of the vessel owner. *Id.* at 534. On appeal, the respondent argued that the vessel owner should have been required to assert his limitation of liability defense in state court, and otherwise accede to state court jurisdiction. *Id.*

In reversing, this Court noted that the district court was indeed possessed of the jurisdiction to pass upon all issues presented, including exoneration and limitation. *Id.* at 534-535. However, under the circumstances, the Court ruled that the district court should have exercised its discretion to allow the claimant to proceed in state court. *Id.* at 542-544. Citing the rationale of *The Lotta*, 150 F. 219 (D. S.C. 1907), the Court stated that if it was the desire of the petitioner to deprive the claimant of his jury trial in the common law jurisdiction, that purpose was not to be allowed, given the language of the saving to suitors clause. *Langnes*, 282 U.S. at 543.

Notwithstanding the result, *Langnes* made clear that a claimant has no absolute right to return to state court under the saving to suitors clause. Rather, a district court must exercise discretion in lifting the injunction and should do so only to provide the claimant the remedy of a jury trial, which he could not obtain in federal court. The plain language of 46 U.S.C. app. § 185, and its seemingly clear prohibition of parallel litigation, was not specifically

addressed. This view of *Langnes* that the district court's discretion should be exercised to allow a single claimant to pursue a jury trial is not simply argument of counsel. It was endorsed by this Court in *Larsen v. Northland Transportation Co.*, 292 U.S. 20, 23 (1934) (recounting that in *Langnes* "[c]ause existed for regarding the limitations proceedings as intended to defeat trial by jury. This Court held, in the circumstances, the federal court should not have enjoined the state court proceeding.")

Likewise, in *Lake Tankers*, the Court again considered the claimant's remedy of a jury trial in state court. 354 U.S. at 148. There, the claims, as amended, were less than the total limitation fund. *Id.* Citing *Langnes*, the Court ruled that the claimant should be allowed under those circumstances to pursue her common law remedy of a jury trial in state court. *Id.* at 154. The Court specifically held that the claimant "must not be thwarted in her attempt to employ her common-law remedy in the State Court *where she may obtain trial by jury.*" *Id.* at 1273 (emphasis added). *Lake Tankers* thus reinforced the idea that the purpose of the judicial exceptions to the federal courts' exclusive jurisdiction is to protect the claimant's right to a jury.

Even in cases where the above referenced exceptions are established, a claimant must still file the appropriate stipulations with the federal court before being allowed to proceed in state court. *See Texaco, Inc. v. Williams*, 47 F.3d 765, 769 (5th Cir. 1995). This underscores the primacy of the federal court as the forum for determination of issues of liability and limitation, and the reality that claimants will be allowed to litigate elsewhere only under limited circumstances.

3. The jurisdictional conflict between the Limitation Act and the saving to suitors clause.

The issue of whether the district court should exercise its discretion to allow claimants to proceed with jury trials in state court arises from the jurisdictional context in which actions under the Limitation Act are litigated. Federal district courts have exclusive admiralty jurisdiction over suits brought pursuant to the Limitation Act. *See* 28 U.S.C. § 1333; *Ex Parte Green*, 286 U.S. 437, 439-40 (1932). In Limitation Act proceedings, as in all admiralty cases, there is no right to jury trial. *See Waring v. Clarke*, 46 U.S. (5 How.) 441, 459 (1847) (holding that the Seventh Amendment does not provide for jury trial in admiralty cases). Moreover, as set forth above, once the Limitation Act proceeding commences, claimants are typically enjoined from pursuing litigation in other courts.

The same statute that grants the federal courts exclusive admiralty jurisdiction saves to suitors "all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333(1). The saving to suitors clause evinces a preference for jury trials and common law remedies. *Beiswenger*, 86 F.3d at 1037; *Odeco Oil & Gas Co. v. Bonnette*, 74 F.3d 671, 674 (5th Cir. 1996). Claims, such as Petitioner's, arising under the Jones Act also carry with them a right to jury trial. *See* 46 U.S.C. app. § 688 (1994); *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 20-21 (1963). If a claimant is forced to litigate his claims in a federal admiralty proceeding, he is denied this common law remedy of a trial by jury.

Thus, the tension that exists between the saving to suitors clause and the Limitation Act centers on the availability of a jury trial in a common law court versus a bench trial by a court sitting in admiralty. Contrary to Petitioner's argument, this is not a minority view, but a principle that has been widely recognized by the federal appellate courts. *See, e.g., Gorman v. Cerasia*, 2 F.3d 519, 524 (3d Cir. 1993) ("The exclusive admiralty jurisdiction of the federal courts in Limitation Act actions directly conflicts with the 'saving to suitors' clause of 28 U.S.C. § 1333, which preserves common law rights, including the right to trial by jury."); *In re Muer*, 146 F.3d 410, 417 (6th Cir. 1998) ("To accommodate the competing interests of a shipowner's right to limit liability and a claimant's right to a trial by jury, the Supreme Court has established two situations in which claimant must be allowed to pursue a claim before a jury."); *Newton v. Shipman*, 718 F.2d 959, 962 (9th Cir. 1983) ("In resolving possible conflicts the courts have developed two exceptions to the district court's exclusive jurisdiction and the absence of a jury right in limitation actions."); *Suzuki of Orange Park, Inc. v. Shubert*, 86 F.3d 1060, 1063 (11th Cir. 1996) ("To reconcile the tension between the exclusive admiralty jurisdiction over Limitation Act claims and the presumption favoring jury trials under the saving to suitors clause, courts have identified a few circumstances under which the damage claimants may litigate the issue of liability *vel non*, as well as damages, in their chosen fora.").

As is clear from *Langnes*, a claimant's rights under the saving to suitors clause are by no means absolute. On

the whole, exclusive federal jurisdiction under the Limitation Act takes precedence, in that "suitors" are often required to litigate their claim in federal district court without a jury trial. This preference routinely occurs in multiple claimant cases or cases in which the fund is inadequate to satisfy the claims asserted. Indeed, this Court in *In re East River Towing Co., Inc.*, 266 U.S. 355, 367 (1924), held that the Jones Act did not remove seamen's claims from the reach of the Limitation Act despite the inconsistency between the seamen's statutory right to jury trial and the lack of a jury in the admiralty court. In fact, except for the two narrow, judicially created exceptions, claimants are required to forego their right to trial by jury and pursue their claims in federal court without a jury.

When viewed in this context, it becomes evident that the "single claimant" and "adequate fund" exceptions serve no legal purpose and are therefore inapplicable where, as here, the remedy claimant seeks is available in the federal limitation proceeding, *i.e.* a non-jury trial seeking a money judgment. No conflict exists here between the Limitation Act and the saving to suitors clause, and neither exception comes into play. To hold otherwise would create an ad hoc rule of judicial convenience that has no basis in the purpose for the exceptions. Petitioner, however, fails to even consider the purpose of the exceptions and instead proposes a mechanical approach that would allow claimants to litigate in state court simply because there is one claimant or the fund is adequate. This approach should be rejected because there is no foundation in legal logic to wrest from the federal

courts their exclusive jurisdiction over admiralty suits when claimants' common law remedies are not at risk.

B. There Is No Conflict Between The Limitation Act And The Saving To Suitors Clause In This Case Because Claimant Has Waived His Right To Trial By Jury In His State Court Jones Act Case.

Lewis & Clark filed this action pursuant to the Limitation Act. There is no dispute that exclusive jurisdiction over this action lay in the federal district court, even after Petitioner filed his subsequent state court action. Likewise, once Lewis & Clark filed the federal limitation proceeding, it was entitled to a stay of other actions involving the particular voyage under the express provisions of the Limitation Act. *See* 46 U.S.C. app. § 185.

By his conduct in the state court action, Petitioner made clear that he had no desire to have this case tried to a jury, even though that remedy was saved to him under the saving to suitors clause. First, Petitioner did not file a jury demand in the state court action, thus waiving his right to a jury trial. (App. 141). *See* 735 Ill. Comp. Stat. 5/2-1105 (West 1992). Next, Petitioner moved to strike the jury demand filed by Lewis & Clark in the state court action. Lewis & Clark's jury demand was in fact stricken on Petitioner's Motion and the case was set to proceed as a bench trial.

Because Petitioner has not sought and, in fact, has taken steps to avoid a jury trial, there is no conflict between the Limitation Act and Petitioner's saved remedy of a jury trial, as a non-jury trial is precisely what he

will obtain in the federal or state court. The concerns expressed by this Court in *Langnes* and *Lake Tankers* therefore are not implicated in this case. Unlike in *Lake Tankers* and *Langnes*, Lewis & Clark is not using this Limitation Act as a weapon to deprive Petitioner of the common law remedy of trial by jury. *See Langnes*, 282 U.S. at 533; *Lake Tankers*, 354 U.S. at 153. Petitioner voluntarily rejected that remedy. For this reason, the "single claimant" and "adequate fund" exceptions are inapplicable.

C. Claimant Has Failed To Identify Any Other "Saved Remedy" That Would Justify Application Of The Single Claimant Or Adequate Fund Exceptions.

This Court has repeatedly expressed a deep reluctance to create broad exceptions to federal jurisdiction. In *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 14 (1983), this Court declared that abstention "is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it." (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976)) As Chief Justice Marshall wrote in *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821), "[w]e have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given."

Lake Tankers and *Langnes* set forth two specific exceptions to the federal courts' exclusive jurisdiction over Limitation Act proceedings, essentially creating a different version of abstention unique to the context of this Court's exclusive admiralty jurisdiction involving the

Limitation Act. Those exceptions are designed to protect claimant's common law remedies, specifically trial by jury. The exceptions should not be extended beyond their legal purpose to remove Limitation Act proceedings from the federal courts' exclusive jurisdiction when claimants' common law remedies are not at risk. Rather, they should be treated as "extraordinary" and "narrow" exceptions to the federal courts' exclusive jurisdiction.

Petitioner asserts in his brief that he is seeking an *in personam* judgment against the vessel owner, which is a remedy saved under the saving to suitors clause (*See* Petitioner's Brief, p. 35). However, this remedy is also available to Petitioner in the Limitation Act proceeding. *See Hartford Accident & Indem. Co. of Hartford v. Southern Pac. Co.*, 273 U.S. 207, 217 (1927) (holding that the district court in a Limitation Act proceeding may enter judgment against the vessel owner *in personam*, as well as *in rem* against the res, or substituted funds). Consequently, there is no conflict between the remedy of an *in personam* judgment and the Limitation Act proceeding.

Petitioner also suggests that the saving to suitors clause permits him a choice of forum. (*See* Petitioner's Brief, pp. 35-36). The cases cited by Petitioner, however, do not support the proposition. In fact, Judge Learned Hand in *Curtis Bay Towing Co. v. Tug Kevin Moran*, 159 F.2d 273, 276 (2d Cir. 1947), recognized that enjoining the claimants' suits in Pennsylvania did not "deny to any claimant the right of a common law remedy where the common law is competent to give it . . . ." Moreover, when Judge Hand referred to a claimant's interest in choosing his forum, he was not talking about a federal versus state forum. Rather, he was discussing "forum" in

the context of the doctrine of forum non-conveniens. The following portion of the opinion that Petitioner omitted from his Brief demonstrates this:

> The privilege of limiting liability is not part of any doctrine of forum non-conveniens; a ship owner, sued in several places by several persons, has no advantage over other persons in the same position. If he could consolidate the several suits against him, he must fulfill those conditions that govern the consolidation of actions; if he would move them for trial elsewhere, he must fulfill those that govern the removal of cases.

Id. Curtis Bay simply holds that in a case where the vessel owner no longer has a jurisdictional basis to be in federal court, its desire to have all claims asserted against it litigated in one convenient forum does not trump a claimant's general interest in choosing his own forum. *Curtis Bay* does not hold that the saving to suitors clause protects a claimant's choice of a nonfederal forum.

As this Court stated in *The Moses Taylor*, 71 U.S. (4 Wall.) 411, 431 (1867), "[i]t is not a remedy in the common-law courts which is saved, but a common-law remedy." Thus, it has long been established that the saving to suitors clause does not guaranty maritime suitors a nonfederal forum. *See, e.g., Tennessee Gas Pipeline v. Houston Cas. Ins. Co.*, 87 F.3d 150, 153 (5th Cir. 1996); *Poirrier v. Nicklos Drilling Co.*, 648 F.2d 1063, 1066 (5th Cir. 1981). In *Poirrier*, the plaintiff filed suit in Louisiana state court pursuant to the saving to suitors clause alleging that he was injured on an inland submersible drilling barge on the Atchafalaya River as a result of the barge owner's

negligence. *Id.* at 1064. The defendant, invoking the diversity jurisdiction of the federal courts, removed the action to the United States District Court for the Eastern District of Louisiana. *Id.* Plaintiff moved for remand on the grounds that the removal violated the express provisions of the saving to suitors clause. *Id.*

The Fifth Circuit rejected the plaintiff's argument and held that maritime actions brought in state court pursuant to the saving to suitors clause are removable on diversity grounds. *Id.* at 1066. The Fifth Circuit further concluded:

> The "saving to suitors" clause does no more than preserve the right of maritime suitors to pursue nonmaritime *remedies*. It does not guarantee them a nonfederal *forum*, or limit the right of defendants to remove such actions to federal court where there exists some basis for federal jurisdiction other than admiralty.

Id. (italics in original); *see also* 14 A Charles Alan Wright et al., *Federal Practice and Procedure* § 3674 (1998) ("The saving to suitors clause has long been construed to afford litigants a choice of remedies, not of forums.").

Claimant's reliance upon *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109 (1924), is similarly misplaced. In that case, the Court decided whether agreements for arbitration of disputes arising under maritime contracts were within the scope of the New York Arbitration Law. *Id.* at 124. The case did not involve the limitation of liability statute or a determination of whether the Jones Act claimant can pursue a non-jury remedy under the saving to suitors clause. The issue before that Court was maritime arbitration, a customary and ordinary practice dating

back to 1320, centuries before the passage of the saving to suitors clause. *Id.* at 122 (and the reference to Selden Society, Select Pleas in the Court of Admiralty). As pointed out in Petitioner's Brief, the remedy saved must predate the advent of federal admiralty jurisdiction, but must also be unavailable in the limitation proceeding. The maritime arbitration remedy met both requirements; Claimant's Jones Act suit meets neither. Indeed the ruling in *Red Cross Line* is consistent with Lewis & Clark's position in this case.

Petitioner also relies upon *Linton v. Great Lakes Dredge & Dock Co.*, 964 F.2d 1480 (5th Cir. 1992), a case that simply has no application to the instant case. In *Linton*, the defendant removed the plaintiff's Louisiana state court Jones Act case, arguing that the federal court had exclusive jurisdiction because the case had been designated an admiralty and maritime claim pursuant to a Louisiana statute and was non-jury. *Id.* at 1483. The Fifth Circuit rejected this argument, finding that a maritime non-jury action was a remedy within the scope of the saving to suitors clause. *Id.* at 1488.

Linton is inapplicable because it was not a limitation action and, unlike in this case, the defendant in *Linton* did not have an independent jurisdictional basis to be in federal court. *Linton* does not address the issue before this Court in that the Fifth Circuit did not determine whether a vessel owner's interest in limitation and exoneration in federal court conflicted with a claimant's common law remedies under the saving to suitors clause. Unlike the defendant in *Linton*, Lewis & Clark has an independent jurisdictional basis to be in federal court, *i.e.* exoneration from and limitation of liability.

Petitioner relies heavily upon *Kreta Shipping, S.A. v. Preussag International Steel Corp.*, 192 F.3d 41 (2d Cir. 1999). First, *Kreta* is not applicable, as the Second Circuit expressly declined to decide whether the non-common law action that the insurer sought to institute abroad was saved under the saving to suitors clause. *Id.* at 49 n.7.

More fundamentally, *Kreta* is wrongly decided. Its overly expansive reading of *Lake Tankers* was flawed, since the Second Circuit placed the claimant's request for an alternative forum on the same level as the vessel owner's invocation of original federal jurisdiction in the limitation case. The teaching of *Langnes* is that they are on unequal footing, and that the limitation forum will prevail, unless resort to another forum is necessary to secure a remedy not available in the federal court. In *Lake Tankers*, the remedy sought was not available and, thus, the claimant was allowed to go to the other forum. As set forth above, the exceptions to the federal court's exclusive jurisdiction were created to protect claimants' common law remedies. When those remedies are available in the limitation court, there is no reason for the federal court to abstain.

Kreta further ignores the role of the district court. The district court in a Limitation Act case has exclusive jurisdiction to decide the case as a whole, including both the issue of limitation and exoneration. To allow claimants to exit the federal court proceeding regardless of the remedies they are seeking would impair this grant of exclusive jurisdiction to the federal courts and the effectiveness of the Limitation Act.

As this Court succinctly stated in *Lake Tankers*, the claimant "must not be thwarted in her attempt to employ

her common-law remedy in the state court *where she may obtain trial by jury.*" 354 U.S. at 153 (emphasis added). In this case, there is no threat to Petitioner's common law remedies. His desire for a state court non-jury trial does not conflict with the Limitation Act. Rather, Petitioner will receive the same remedy in federal court as he is seeking in the state – a bench trial. Since the remedy sought by Petitioner is already available to him in the federal court proceeding, there is no conflict between the Limitation Act and the saving to suitor clause that warrants a lifting of the stay.

Petitioner in this case wrongfully places his desire for an alternative forum on the same footing as the vessel owner's invocation of the district court's original jurisdiction in the limitation case. They are not on the same footing. If they were, a personal injury claimant could never be required to litigate in the federal limitation case, even if the adequate fund and single claimant exceptions were not applicable. Rather, the primacy of the federal proceeding should defer to the alternative forum only if the remedy sought is not available in the limitation proceeding. Otherwise, the exception will swallow the rule, and the federal court's limitation jurisdiction becomes an adjunct to the state court or other alternative forum.

II. THE LIMITATION ACT CONFERS THE RIGHT TO EXONERATION FROM AS WELL AS LIMITATION OF LIABLITY.

Petitioner argues that the Limitation Act does not afford the vessel owner the right to have liability issues decided by the federal court, citing to *In Re East River*

Towing Co., Inc., 266 U.S. 355 (1924) and *The Benefactor*, 109 U.S. 239 (1880) (*see* Petitioner's Brief p. 21). Not only do these cases fail to support the proposition for which Petitioner cites them, virtually the entire body of law, both statutory and judicial, supports the opposite conclusion. From the inception of litigation under the Limitation Act, this Court and the lower federal courts have recognized and exercised the power to exonerate as part and parcel of a proceeding under the Act. Further, the language of the Limitation Act itself evidences Congress' intent to allow exoneration. Petitioner's argument should therefore be rejected.

A. Petitioner's Request For Exoneration First And Limitation Second Is The Appropriate Procedure.

For over a century, federal courts have evidenced a firm grasp of the proper conduct of a proceeding under the Limitation Act to include consideration of exoneration as well as limitation of liability. The Eighth Circuit correctly noted that before addressing the limitation question in a Limitation Act proceeding, the court must first decide whether the vessel owner is entitled to complete exoneration based upon the vessel owner's lack of negligence. *Lewis & Clark Marine, Inc.*, 196 F.3d at 907 (*citing Universal Towing v. Barrale*, 595 F.2d 414, 417 (8th Cir. 1979); *In re Port Arthur Towing Co.*, 42 F.3d 312, 317 (5th Cir. 1995); *see also Providence and N.Y. Steamship Co. v. Hill Mfg. Co.*, 109 U.S. 578, 595 (1883). The Eighth Circuit cited firmly established principles when it stated that the vessel owner's liability was by no means assumed by the Limitation Act and that the liability determination is

"part and parcel" of the proceeding. *Lewis & Clark Marine, Inc.*, 196 F.3d at 908.

The Fifth Circuit described a proceeding under the Limitation Act in *In re Port Arthur Towing Co.*, 42 F.3d at 317 (citations omitted) (emphasis added), as follows:

> A limitation proceeding generally comprises a two-step process, *the first being "the establishment of liability of the ship owner to the claimant*, as to which the claimant (or libellant) bears the burden." "The whole doctrine of limitations of liability presupposes that a liability exists which is to be limited. If no liability exists there is nothing to limit." Thus [claimant] was required initially to prove facts supporting his claim that [the vessel owner] was liable to him for his alleged injury.

Unpersuaded by the innumerable authorities that support Lewis & Clark's right to exoneration, Petitioner claims that the right does not exist because this Court's promulgation of Supp. AMC Rule F in 1966 violated the Rules Enabling Act, 28 U.S.C. § 2072 (1994). According to Petitioner, Supp. AMC Rule F created a substantive right to exoneration not found in the Limitation Act.[1] Petitioner's misunderstanding is fundamental, and his argument fails to consider (1) the express language and complete history of the Limitation Act; (2) this Court's undeniable recognition of the vessel owner's right to seek

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[1] Supp. AMC Rule F(2) and F(5) provide, in part, that "[t]he complaint may demand exoneration from as well as limitation of liability" and a claimant must file an answer if the claimant "desires to contest either the right to exoneration from or the right to limitation of liability."

exoneration; (3) Congress' approval of Supp. AMC Rule F as demonstrated by subsequent amendments of the Limitation Act; and (4) the fact that Supp. AMC Rule F does not create, abridge, enlarge or modify the vessel owner's right to exoneration. As set forth below, Petitioner's argument should be rejected.

1. The language and history of the Limitation Act demonstrate a vessel owner's right to exoneration from, as well as limitation of, liability.

The starting point on any question concerning the application and interpretation of a statute is an examination of the express language of the statute itself. *See Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 467, 475-76 (1992) (construing the Longshore & Harbor Workers' Compensation Act by analyzing the language of the statute itself and giving effect to the "clear meaning of statutes as written.") The legislative intent and history of the statute may supplement such statutory analysis, if the text's meaning as written remains unclear. *See, e.g., Chapman v. Houston Welfare Rights Organ.*, 441 U.S. 600, 608-612 (1979).

The text of the Limitation Act itself demonstrates Congress' intent to allow for both exoneration and limitation for vessel owner's liability. First, the language of the primary limitation provision suggests Congress gave the power to exonerate to the district court. 46 U.S.C. app. § 183 (1994) (emphasis added), states that "[t]he liability of the owner of any vessel . . . *shall not* . . . *exceed* the amount of the interest of such owner in such vessel, and

her freight then pending." This language implicitly recognizes that the liability of the vessel owner may be less than the value of the ship. As there is no provision in the Limitation Act expressly calling for a determination of liability separate from limitation, Congress must have intended for federal courts to first make such a determination when a vessel owner proceeds under the Limitation Act.

Other provisions support the same conclusion. Section 184 of the Limitation Act states that a vessel owner "may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel *may be liable*." 46 U.S.C. app. § 184 (1994) (emphasis added). If, as Petitioner suggests, Congress intended the vessel owner to confess liability in order to proceed with limitation under the Limitation Act, as was the case in England, Congress would have used the mandatory *shall* instead of the permissive *may*. Thus, the clear import of this language is that a vessel owner who proceeds under the Limitation Act is not presumed to be liable.

The prior versions of the Limitation Act further bolster this reading of the current statute. For example, Section 4 of the original Limitation Act provided that "it shall be deemed sufficient compliance . . . if he or they shall transfer his or their interest . . . to a trustee . . . to act as such trustee for the person or persons *who may prove to be legally entitled thereto.*" *See* George C. Sprague, *Limitation of Ship Owners' Liability*, 12 N.Y.U.L.Q. Rev. 568, 580 (1935) (emphasis added) (quoting section four of the original Limitation of Liability Act). This original language

reflects Congress' intent that proceedings under the Limitation Act include a phase requiring claimants to prove they are entitled to recovery. Nowhere in the text of the original Limitation Act or its several amendments has a vessel owner been required to confess liability in order to seek limitation.

Congress passed the original Limitation Act on March 3, 1851. Contrary to Petitioner's claim, the original American Limitation Act was not a recodification of the English Limitation Act. Rather, the original version of the Limitation Act passed by Congress was an amalgamation of English Law, statutes of Massachusetts and Maine, and the French system, making the "American system of limitation a hybrid and far different from the English system." George C. Sprague, *Limitation of Ship Owners' Liability*, 12 N.Y.U.L.Q. Rev. 568, 578-79 (1935).

The different functions of the American admiralty court and the English Court of Chancery best explain the distinctions between the American Limitation Act and its English counterpart. The Act of 7 George II, ch. 15 (1734) was the first English statute creating the right of a vessel owner to limit liability. Under that statute, a party was required to admit liability before gaining the benefit of limitation because the English Court of Chancery lacked the power to investigate demands in admiralty. *See Norwich Co. v. Wright*, 80 U.S. 104, 124 (1871). Naturally, the American law and admiralty courts, with full power to investigate and adjudicate claims, were not so bound. For this reason, confession of liability was not a necessary prerequisite to filing a limitation of liability action.

Further, Petitioner's argument that the Eighth Circuit's decision is inconsistent with the legislative history of the Limitation Act is specious. The quoted remarks of Senator Hamlin found in Petitioner's Brief were general, and in no way specifically addressed to this question. (*See* Petitioner's Brief, p. 21). Justice Bradley's remarks in *Norwich* concerning the shortcomings of the English Chancery Court in comparison to the American admiralty courts are more specific, and belie Senator Hamlin's general and inaccurate comments.

That same legislative history cited by Petitioner makes clear that not everyone shared Senator Hamlin's casual view. The remarks of Senator Davis demonstrate that Congress knew the American statute was different from the English one. *See* Remarks of Senator Davis, Cong. Globe, 31st Cong., 2d Sess. 714 (1851) (emphasis added) ("it is the adoption of a system which has been several years in operation in England, *with certain alterations . . . to adapt it to the affairs of this country*"). Senator Davis' remarks can be fairly read to show Congress recognized that English Courts of Chancery could not investigate demands in admiralty (and that, consequently, vessel owners under that system had to admit liability) and that the American Limitation Act was making "alterations" to the English statutes to "adapt to the affairs of this country" by allowing a vessel owner to petition for exoneration from and limitation of liability. As noted, when this Court took up the issue, it certainly recognized the difference. *See also Norwich*, 80 U.S. at 118, 124; *The Benefactor*, 103 U.S. 239, 243 (1880).

2. Supreme Court precedent establishes that the Limitation Act grants vessel owners the right to exoneration from liability, as well as limitation of liability.

In *Norwich*, this Court was "called upon to interpret the Act, and to adopt some general rules for the better carrying it into effect." *Providence and N.Y. Steamship Co. v. Hill Mfg. Co.*, 109 U.S. 578, 591 (1883). *Norwich* both interpreted the Limitation Act, and announced the promulgation of procedural rules that reflected that interpretation. Petitioner's claim that the *Norwich* decision holds vessel owners are not permitted under the Limitation Act to contest liability constitutes a fundamental misreading of that case. (*See* Petitioner's Brief, p. 23).

Indeed, the problem addressed by Justice Bradley in *Norwich* was not exoneration, but "what court shall be resorted to, [and] what proceedings shall be taken . . . ." *Id.* at 123. The Court presumed that once these problems were addressed, the adjudicating court could address exoneration. "It follows, therefore, that the ship owner must either admit the claims for damage which he thus sets up, or must ask the court to have them adjudicated." *Id.* at 124. The Court then stated that:

> The proper course of proceeding for obtaining the benefits of the act would seem to be thus: When a libel for damage is filed, either against the ship *in rem* or the owners *in personam*, the latter (*with or without an answer to the merits*) should file a proper petition for apportionment of damages according to the statute. . . . (emphasis added)

Id. at 125. Thus, contrary to Petitioner's contention, the holding in the *Norwich* affirms the right of the vessel owner to seek exoneration under the statute. The admiralty rules announced were merely "for aiding the parties" in the procedural aspects of a limitation proceeding.

Petitioner's reliance upon *The Benefactor*, 103 U.S. 239 (1880) for the proposition that the right to exoneration is a creature of the admiralty rules promulgated after *Norwich* is equally misplaced. (*See* Petitioner's Brief, p. 23) In *The Benefactor*, the vessel owner filed his petition for limitation after a judgment was rendered against him in another court that exceeded the value of the vessel in question. The district court dismissed the vessel owner's petition, relying upon the Fifty-Sixth admiralty rule, which stated that the vessel owner may contest all liability or assert limitation of liability. The district judge interpreted this rule to mean that the vessel owner had to assert exoneration at the same time as limitation, and the failure to do so in the first case renders limitation unavailable in the second.

Justice Bradley, again writing for the Court, rejected this rationale and held that the admiralty rules were not intended to preclude a party from claiming the benefit of the Limitation Act after a prior trial on the cause of the collision. In no way did the Court hold that the right to exoneration was based entirely on the Fifty-Sixth admiralty rule. As stated, that rule merely set forth the Court's interpretation of the Limitation Act.[2]

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[2] This interpretation led to the promulgation of Admiralty Rule 56, which provided that "in proceedings to obtain a decree

Petitioner is making the erroneous assumption that because exoneration is mentioned in the admiralty rule, and not specifically in the Limitation Act, its source is the admiralty rules themselves. As noted above, this is belied by the *Norwich* decision. Petitioner also ignores the obvious fact that in promulgating the admiralty rules, this Court was engaged in the process of interpreting the Limitation Act. Old Rule 56 (present Rule F) reflected this Court's understanding that the right to exonerate was part of the rights conferred by Congress, under its language, and in order to "obtain to 'benefit of the Act.' " This understanding is certainly clear in the early cases following *Norwich* and *The Benefactor*. *See, e.g., Providence and N.Y. Steamship Co. v. Hill Mfg Co.*; 109 U.S. 578, 590-91 (1883).

3. By failing to address exoneration in subsequent amendments to the Limitation Act, Congress has approved this Court's interpretation of the Limitation Act.

The Limitation Act has been amended and expanded on multiple occasions following this Court's decision in *Norwich*. (e.g., 1877, 1884, 1893, 1935, 1936, 1984, 1992, 1993, 1996). If Congress did not approve of the holding in *Norwich* and the rules promulgated by the Courts thereafter, it had ample opportunity to act. Congress could have

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for a limited liability, the owners may contest all liability on their part or that of their vessel, as well as a claim a limitation of liability under the statute." *The Benefactor*, 103 U.S. at 243-244. The gist of rule 56 was preserved in Supp. AMC Rule F(2).

amended the Limitation Act to repeal this Court's interpretation of the statute and deprive vessel owners of the right to exoneration. Congress, however, failed to do so in its subsequent amendments. This Court has cited such legislative inaction as evidence of Congressional approval of the Court's construction of a statute. *See Neal v. United States*, 516 U.S. 284, 295 (1996) (citations omitted):

> Our reluctance to overturn precedents derives in part from institutional concerns about the relationship of the Judiciary to Congress. One reason that we give great weight to *stare decisis* in the area of statutory construction is that "Congress is free to change this Court's interpretation of its legislation." We have overruled our precedents when the intervening development of the law has "removed or weakened the conceptual underpinnings from the prior decision, or where the later law has rendered the decision irreconcilable with competing legal doctrines or policies." Absent those changes or compelling evidence bearing on Congress' original intent, our system demands that we adhere to our prior interpretations of statutes.

See also Guardians Assoc. v. Civil Serv. Comm'n of New York, 463 U.S. 582, 641 (1983) (Stevens, J., dissenting) ("If a statute is to be amended after it has been authoritatively construed by this Court, that task should almost always be performed by Congress."); *See* Norman J. Singer, *Sutherland on Statutory Construction* § 49.10, at 76-77 (5th ed. 1992 & Supp. 2000) ("legislative action by amendment- . . . with respect to other parts of a law which have received a contemporaneous and practical construction may indicate approval of interpretations pertaining to the unchanged and unaffected parts of the law."); Frank E.

Horack, Jr., *Congressional Silence: A Tool of Judicial Supremacy*, 25 Tex. L. Rev. 247, 251-252 (1946) (emphasis added) ("After the decision [interpreting the statute], whether the Court correctly or incorrectly interpreted the statute, the law consists of the statute *plus* the decision of the Court.").

4. The Rules Enabling Act does not invalidate Supplemental Rule F because the Rule does not create, abridge, enlarge, or modify a vessel owner's right to exoneration.

Petitioner's argument that Supp. AMC Rule F is void under the Rules Enabling Act (the "Act") because it creates a substantive right that did not otherwise exist is specious. The Act prohibits rules that "abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072 (1994). Supp. AMC Rule F, at most, expresses the right to exoneration that is established by the Limitation Act and the decisions of this Court. Supp. AMC Rule F simply provides the procedure for both vessel owners and claimants to pursue their various remedies under the Limitation Act. Accordingly, in promulgating Supp. AMC Rule F, this Court did not create, abridge, enlarge, or modify a vessel owner's right to exoneration.

Prior to the promulgation of Supp. AMC Rule F on February 28, 1966, the right to exoneration was recognized by this Court in *Norwich* and *The Benefactor*, which trace the vessel owner's right to exoneration back to the Limitation Act. The Eighth Circuit properly recognized that the right to exoneration was included in the Limitation Act (and its subsequent interpretations by this Court)

in holding that "the determination of liability itself is part and parcel of the limitation proceeding." *Lewis & Clark Marine, Inc.*, 196 F.3d at 908. Further, a Rule, as here, may confirm and state a principle of substantive law that has been established by statute or decisions. *See Washington-Southern Navigation Co. v. Baltimore & Philadelphia Steamboat*, 263 U.S. 629, 635 (1924) ("[o]ccasionally, a rule is empowered to express, in convenient form, as applicable to certain classes of cases, a principle of substantive law which has been established by statute or decisions.")

This Court's longstanding interpretation of the Limitation Act, which allows for exoneration, as well as limitation, should not be disturbed.

CONCLUSION

For the foregoing reasons, Respondent Lewis & Clark Marine, Inc. prays that this Court affirm the judgment of the Eighth Circuit Court of Appeals.

Respectfully submitted,

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